



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/171690

PRELIMINARY RECITALS

Pursuant to a petition filed January 26, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on March 10, 2016, at Janesville, Wisconsin.

The issue for determination is whether petitioner was overpaid MA due to an unreported income increase.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Laura Middleton

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner's Medical Assistance (MA) case is open and on-going.
3. On or about August 8, 2014, petitioner began working at [REDACTED], but that income was not added to her MA budget.

4. Petitioner noted in her calendar that she called to report her new employment.
5. The respondent has no record of petitioner's call, but respondent's representative testified that if petitioner only spoke with a receptionist (as opposed to her worker) her call would not have been added to electronic case comments.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." BC+ Handbook, App. 28.4.2.

There is a question regarding whether or not petitioner reported her employment at [REDACTED]. The respondent has no record of a call, but petitioner has testified that she did call, and has a 2014 calendar notation indicating that she made such call in August, 2014. She recalled that, in her phone call reporting her employment, she was informed that she could earn a maximum of \$987/month and retain her eligibility. She stated that she called and asked to speak with [REDACTED], but [REDACTED] was unavailable. She does not recall being told that she also needed to call the call center to report her employment.

This is a very close decision, but I believe that petitioner did, in fact call to report her new employment, as demonstrated by petitioner's specific testimony regarding that phone call. Based upon the entirety of the record, including petitioner's credible testimony, I conclude that petitioner was overpaid MA, but that the overpayment arose from the respondent's error in failing to act upon her report of employment.

CONCLUSIONS OF LAW

Petitioner was overpaid MA due to respondent's failure to act upon her report of new employment; because the overpayment resulted from agency error, the overpayment is not recoverable.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind MA overpayment claim no. 6900452566 and to cease recovery of it. The county shall do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of April, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 20, 2016.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability